IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Thompson et al.		
Serial No.:	09/703,562	Group No.:	3622
Filed:	11/01/2000	Examiner:	D. Champagne
Entitled:	Methods And Systems For Applying Rebates To Higher Education		

DECLARATION OF FRANCES M. DALE PURSUANT TO 37 C.F.R. 1.132

EFS WEB-FILED
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, Frances M. Dale, state as follows:

1. I currently serve as a consultant to the payment systems industry with approximately 38 years of experience in card and merchant program management as well as marketing and card development for credit, debit, cash rebate, affinity, and co-branded cards. Earlier in my career, I held executive positions with First American Bank (now a part of Wachovia Bank), Visa U.S.A Inc. and First and Merchants National Bank (now a part of Bank of America). Over the past eight years, I have provided occasional consulting services to TuitionFund regarding their rewards program designed to help families save for a higher education.

2. It is my understanding that the TuitionFund patent application is currently rejected as being obvious over the Lidman patent (U.S. Pat. No. 5,471,669) in view of the Schultz patent (U.S. Pat. No. 5,056,019).

3. It is also my understanding that the Examiner has stated that Lidman teaches the use of debit and credit cards. A person of ordinary skill in the art would not conclude that Lidman or Schultz teach the use of a debit or credit card as claimed by TuitionFund. In the TuitionFund system, a central entity such as a rebate network manager monitors sales by a merchant registered with the entity and then determines if the sales are for a member who has a debit and/or credit cards registered with that entity. This is

advantageous because the system does not require extra work on the part of the cardholder (consumer) or the merchant. The merchant can simply process the sale with the debit or credit card as he/she would process any other debit or credit card transaction. The merchant does not need to know that the customer is a member of the system and the customer does not need to identify himself/herself to the merchant as a member of the program at the time of the purchase.

4. Lidman does not teach or suggest the use of a debit or credit card registered with an entity such as a rebate network manager that monitors sales by a merchant registered with the entity and determines if the sales are for a member using a registered debit or credit card. At Column 3, Lines 34-53, Lidman merely states that the hardware used for credit or debit cards could be used to make the system contemplated by Lidman, which uses a separate account identifying card, function. A system where a debit or credit card is registered with a separate entity such as the rebate network manager is not contemplated. Instead, the Lidman system requires the user to identify himself as a system member by presenting an account identifying card to the merchant at the time of purchase. In particular, Lidman requires the use of a separate account identifying card. Column 2, Lines 53-65; Column 3, Line 55 – Column 4, Line 9. Importantly, it is at the site of the merchant that "a determination is made as to whether the coupon value is to be credited to an account." Column 3, Lines 61-63. As a result, there is not a separate entity at a remote location that both monitors sales by registered merchants and determines if the sales are for a registered member using a registered debit or credit card. With Lidman, if the program member is not identified at the cash register at the time of purchase, there is no opportunity for the program member to have the value of the coupon deposited into the user's bank account. With the TuitionFund system, the customer does not need to remember to identify himself as a program member at the time of the purchase. The transaction automatically qualifies as long as the debit or credit card is registered.

5. Schultz also does not teach or suggest the use of a debit or credit card registered with an entity such as a rebate network manager that monitors sales by a merchant

registered with the entity and determines if the sales are for a member using a registered debit or credit card. Schultz like Lidman, also requires the customer to identify himself/herself to the merchant as a member of the program at the time of purchase at the check-out terminal, and thus does not teach a separate, remote entity that monitors sales by registered merchants and determines if the sales are for a registered member using a registered debit or credit card. The PMCS does not perform these functions, the merchant does. Column 7, Lines 20-44; See also Column 4, Lines 64-68 and Column 5, Line 1-7. In the Schultz system, it is the merchant that monitors sales and determines if sales are to a registered member which requires extra work on the part of the merchant versus the TuitionFund system. With Schultz, the customer must identify himself as a program member at the cash register at the time of purchase with his identification card and consumer identification code or there is no benefit to the member which requires extra work on the part of the customer versus the TuitionFund system.

6. Schultz does not teach a debit or credit card registered with the PMCS. While Schultz teaches that certain banks issue debit cards, Schultz relies on a separate consumer identification code that must be presented to the merchant at the time of purchase. See, e.g., Column 6, Lines 39-53. Schultz implies that a separate consumer identification code could be included on the magnetic stripe of a customer's debit card for convenience. However, debit cards cannot be modified in this manner because the standards for encoding of the magnetic stripe for debit cards do not provide for the encoding of such a consumer identification code nor are point-of-sale terminals and automated teller machines (ATMs) programmed to read such a code if it were available on the magnetic stripe of the debit card.

7. When a debit (check) card-based sale is processed at a point-of-sale terminal (POS), the transaction can only involve debiting either a checking account or a cash management account. The POS terminal cannot be used to make deposits to a checking account, cash management account, or savings account. Deposits can only be made to these type of accounts 1) at an ATM machine operated by the bank in which the debit (check) card is issued, and 2) only recently, in a very few limited instances, at an ATM

machine operated by another bank that has an exchange agreement with the debit (check) card issuing bank. The account number that is embossed on the debit (check) card is also encoded on the magnetic stripe and is an International Standards Organization (ISO) standard used by the major debit card brands and issuers.

8. When a debit (check) card is swiped at any merchant-located point-of-sale (POS) terminal (whether the transaction is processed as a signature-based debit or a PIN based debit transaction) the only account that can be accessed from that merchant-located POS terminal is the checking account or cash management account that is tied to the debit (check) card. Therefore, a merchant-located POS terminal and the corresponding card processing networks (whether signature based or PIN based), could not process (charge/debit) the purchase of an item to the consumer's checking account or cash management account and correspondingly post the rebate as a deposit to a checking account, cash management account, savings account, Coverdell IRA account or other College savings account located at the same bank which issued the debit (check) card even if that account number was imprinted as the second account number on the magnetic strip. The magnetic stripe capacity is limited and adding an additional account number to the traditional magnetic stripe of a debit card is not feasible nor allowed in ISO standards. Furthermore, any attempt to have the cash register in Lidman, acting as a rebate network manager, store the registered debit or credit card information would be a violation of the Payment Card Industry Data Security Standard ("PCI DSS"), thereby potentially subjecting the merchant to suspension and revocation of card processing privileges of all major brands of debit and credit cards (e.g., Visa, MasterCard, American Express, and Discover) as well as allowing for possible compromise of debit or credit card information which has resulted in millions of dollars of losses to merchants who have stored such debit and credit card information in violation of PCI DSS.

9. It is also my understanding that the Examiner has stated that although he did not find any teaching of using rebates expressly to pay existing educational debt, that it was common for many people at the time of the instant invention to receive rebates using a cash back credit card and to simultaneously pay existing educational debt. In the view of

a person of ordinary skill in the art this is highly unlikely. I am not aware of any cash back rewards program that existed at the time of TuitionFund's invention of the presently claimed system in 1998 that involved cash-back rebates from participating merchants, rather than from the actual card issuers, that also allowed the cardholder to direct the deposit of the cash back rebates to a deposit account selected by the card holder.

10. A survey of major card issuers (e.g., Chase Bank) shows that the average credit card account in 2006 had annual expenditures of approximately $2,200 to $2,500. If the card issuer offered a 1% cash back rebate on all purchases, the cardholder would have generated approximately $25 in annual cash back rewards for the calendar year. However, many cash back rewards cards have limitations. For example, Discover Card's Platinum Card provides a cash back reward of ¼ of 1% on the first $1,500 of annual expenditures and ½ of 1% on the second $1,500 of annual expenditures. Therefore, a person who spent $2,500 in 2006 utilizing a Discover Card Platinum Card would have generated only $8.75 in cash back rewards. Based upon the information disclosed in Discover's prospectus in connection with their IPO in 2007, in 2006 Discover's U.S. card billing volume was approximately $103 billion and they had 42.4 million credit card accounts which would have yielded an average annual charge volume per card of approximately $2,430 and an average annual cash back reward per card of $8.40.

11. Such small cash back rewards alone can have no meaningful impact on paying educational debt which averages in the tens of thousands for many college graduates. The amounts generated by cash back systems such as those described above which are paid by the card issuer, rather than by participating merchants in TuitionFund's system, are so small that there would be no motivation to set up the claimed system to make payments on existing student loan debt. Indeed, Discover's program (as well as other card issuer programs) depends on breakage to lower the cost of the program. Breakage is the industry term for cash rewards that are never used or redeemed by the cardholder. As presently claimed, a system where a network of merchants offered rebates to registered users that vary from 0.01% to 30% does provide meaningful amounts of rebate proceeds to put towards paying down student loan debt versus current cash back rewards offered

by the card issuer (e.g., Chase, Discover Card). Absent the meaningful amounts generated by the claimed system, there would be no motivation to set up the claimed system using a centralized rebate network manager and higher education accounts. At an average rebate of $8.00 per year, there would be no incentive for the investment in the infrastructure to develop and administer the program.

12. I further declare that all statement made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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Date: January 22, 2008